

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

 IRACING.COM MOTORSPORT SIMULATIONS,
 LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TIM ROBINSON, individually and d/b/a
 www.ow-racing.com and www.torn8oalley.com,Defendant.

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Civil Action No.

05-11639 NG

MOTION TO BIFURCATE

Plaintiff iRacing.com Motorsport Simulations, LLC ("iRacing") respectfully requests that the Court bifurcate this action into a liability phase and a damages phase. As grounds for this motion, iRacing states:

1. Fed. R. Civ. P. 42(b) provides this Court with discretion to order a separate trial on any separate issue of any claim for the purposes of judicial convenience and economy. Fed. R. Civ. P. 42(b); Lisa v. Fournier Marine Corp., 866 F.2d 530, 531 (1st Cir. 1989) (district court did not abuse its discretion in bifurcating the trial); Chapman v. Bernard's Inc., 167 F. Supp. 2d 406, 417 (D. Mass. 2001) (bifurcating case into liability and damages phases).

2. Here, the court has already determined in a prior summary judgment decision that iRacing has established all of the elements of its copyright infringement claim and all that remains to be tried as to the copyright claim is Robinson's "fair use" affirmative defense.¹ In addition, iRacing intends to move for partial summary judgment on the bulk of its declaratory judgment claims.

¹ iRacing notes that the Court established Robinson's liability on the Digital Millennium Copyright Act ("DMCA") claim pursuant to its May 25, 2007 Order.

3. iRacing believes that its attorneys fees may exceed the damages that the Court may award for the copyright infringement and DMCA claims and may be willing to waive trial of damages upon the award of reasonable attorneys fees as provided in the Copyright Act and under the DMCA.

4. Accordingly, iRacing proposes that the Court bifurcate into two phases: (1) a trial regarding Robinson's liability on copyright infringement and breach of contract claims, as well as the amount of reasonable attorneys fees associated with iRacing's claims; and (2) should iRacing establish Robinson's liability, a trial regarding damages on all claims, subject to a further stipulation by iRacing to limit damages requested.

WHEREFORE, based on the foregoing reasons, iRacing respectfully requests that this Court bifurcate this action as set forth above.

DATED: November 5, 2007

Respectfully submitted,

iRacing.com Motorsport Simulations, LLC

By its attorneys,

/S/ Michael G. Andrews
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Certification Under Local Rule 7.1(a)(2)

I, Michael G. Andrews, attorney for Plaintiff iRacing.com Motorsport Simulations, LLC, hereby certify that I complied with Local Rule 7.1 in that I conferred with defendant's counsel by electronic mail on November 5, 2007 in a good faith attempt to narrow and/or resolve the issues addressed in this motion. The conference did not result in defendant's assent to this motion.

/s/ Michael G. Andrews
Michael G. Andrews

Certificate of Service

I, Michael G. Andrews, attorney for Plaintiff iRacing.com Motorsport Simulations, LLC, hereby certify that on this 5th day of November 2007, I filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: Joseph F. Ryan, Lyne Woodworth & Evarts LLP, 600 Atlantic Avenue, Boston, MA 02210, counsel for Defendant Tim Robinson.

/s/ Michael G. Andrews
Michael G. Andrews